

### REMARKS

Applicant has amended claims 1-3, 5-8 and 34-35. Claims 4, 9-33, and 36-43 have been canceled. These changes have been made to place the claims in better form for examination and to further obviate 35 U.S.C. §§102(b) and 103(a) rejections as set forth in the Office Action dated November 22, 2005. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 1 and 3 under 35 U.S.C. §102(b) as being anticipated by Recorbet, et al. Applicant has amended claims 1 and 3 by replacing "gram-negative bacterium" with "*Agrobacterium*". Applicant submits that Recorbet et al. teaches using an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *E. coli*. In contrast, the present invention teaches the use of an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *Agrobacterium*. Traditionally, *Agrobacterium* has been used to introduce exogenous DNA into plants while *E. Coli* has not been used for the introduction of exogenous DNA into plants. In addition, the use and application of the sacB gene in Recobert et al. and the present invention is entirely different. The product of Recorbet et al. uses the induction of the sacB gene to prevent proliferation and trigger the disappearance of *E. Coli* from soil for the purpose of controlling microorganism populations in soil. The product of the present invention uses the induction of the sacB gene to circumvent the use of antibiotics to eliminate *Agrobacterium* from plant genetic engineering systems. SacB has not been used before to circumvent the use of antibiotics. Therefore, the present invention is different and novel from what is discussed in Recorbet et al. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 2 under 35 U.S.C. §102(b) as being anticipated by Fouet et al. Applicant has amended claim 2. Applicant submits that Fouet, et al. teach a recombinant nucleotide sequence comprising an inducible regulatory sequence other than SacR operatively linked to a nucleotide sequence encoding a partial

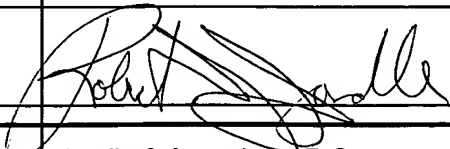
levansucrase gene. In addition, Fouet et al. teach the complete removal of the levansucrase gene so that a different gene may be inserted in its place in a vector placed in *B. subtilis*. In contrast, the product of the present invention has the entire levansucrase gene and the entire levansucrase gene is placed inside *Agrobacterium* instead of *B. subtilis*. Therefore, the present invention is different and novel from what is discussed in Fouet et al. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 4 and 5 under 35 U.S.C. §102(b) as being anticipated by Hamilton, U.S. Patent No. 5,733,744. Applicant has canceled claim 4 and has amended claim 5. The use and application of the sacB gene in Hamilton et al. compared to the use and application of the sacB gene in the product of the present of invention differs greatly. Applicant submits that Hamilton teaches the use of the sacB gene from *B. amyloliquifaciens* as a positive selection marker for plasmid vectors inserted into *A. tumefaciens*. That is, when a DNA fragment is inserted into a vector (which is inserted into *A. tumefaciens*) containing the sacB gene and a nearby BamHI cloning site, the sacB gene is disrupted causing the sacB gene to be inactivated thus allowing *A. tumefaciens* to grow on a medium containing sucrose. In contrast, in the product of the present invention the sacB gene is active thus allowing for the production of levansucrase which leads to the elimination of *Agrobacterium*. The present invention does not involve the use of the sacB gene as a marker to determine if plasmid DNA vectors have been inserted into *A. tumefaciens*. Therefore, the present invention is very different and novel from what is discussed in Hamilton. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-3, 6-8 and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Recorbet et al. as applied to claims 1 and 3, and further in view of applicant's admitted prior art. Applicant has amended claims 1-3, 6-8 and 34-35 by replacing "gram-negative bacterium" with "*Agrobacterium*". Applicant submits that Recorbet et al. teaches using an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *E. coli*. In contrast, the present invention teaches the use of an inducible regulatory sequence

operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *Agrobacterium*. Applicant believes *Agrobacterium* has been used to introduce exogenous DNA into plants while *E. Coli* has not been used for the introduction of exogenous DNA into plants. In addition, the use and application of the sacB gene in Recobert et al. and the present invention is entirely different. The product of Recobert et al. uses the induction of the sacB gene to prevent proliferation and trigger the disappearance of *E. Coli* from soil for the purpose of controlling microorganism populations in soil. The product of the present invention is different and contains the induced form of the sacB gene which allows for the production of levansucrase which destroys *Agrobacterium* in plant genetic engineering systems. One major difference the present invention differs from previous art is the prior art does not have the induced form of the sacB gene and must use antibiotics to destroy the *Agrobacterium*. Therefore, the present invention is novel and nonobvious over the prior art.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §102 and 103. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Robert J. Jondle, Reg. No. 33,915				
SIGNATURE				DATE	March 22, 2006
Address	Jondle & Associates P.C. 858 Happy Canyon, Suite 230				
City	Castle Rock	State	CO	Zip Code	80108
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898